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IN THE
**SUPREME COURT OF THE
UNITED STATES**

OCTOBER TERM, 1947

No. 168

MARVIN CLAUDE BELL,

Petitioner,

vs.

THE STATE OF NORTH CAROLINA,

Respondent.

**BRIEF OF THE STATE OF NORTH CAROLINA,
RESPONDENT, OPPOSING PETITION FOR WRIT
OF CERTIORARI**

STATEMENT OF THE CASE

The petitioner, Marvin Claude Bell, seeks by writ of *certiorari* to have the United States Supreme Court review the decision of the Supreme Court of North Carolina affirming a judgment of the Superior Court of Wilkes County imposing the death sentence upon the petitioner for committing the crime of rape on Peggy Ruth Shore in contravention of Section 14-21 of the General Statutes of North Carolina. The opinion of the Supreme Court of North Carolina was filed June 5, 1947, and is reported as *STATE v. RALPH VERNON LITTERAL and MARVIN CLAUDE BELL*, 227 N. C., page 527.

FACTS

The petitioner was indicted for the capital crime of rape under Section 14-21 of the General Statutes of North Carolina which reads as follows:

"Punishment for rape.—Every person who is convicted of ravishing and carnally knowing any female of the age of twelve years or more by force and against her will, or who is convicted of unlawful and carnally knowing and abusing any female child under the age of twelve years, shall suffer death."

The petitioner was first arrested on a warrant of the United States Government charging him with the crime of kidnapping; but thereafter on the 6th day of November, 1946, His Honor Johnson J. Hayes, United States District Judge for the Middle District of North Carolina, by order duly entered, directed the United States Marshal for the Middle District to release the defendants to the Sheriff of Wilkes County, to the end that they might answer the charge against them in the Superior Court of said County, without prejudice to the rights of the United States, to prosecute the defendants in the Middle District Court for the offenses committed against the laws of the United States of America.

Thereafter, at the December term of the Superior Court of Wilkes County the Grand Jury of said County returned a true bill of indictment against each of the defendants, charging them with the crime of rape for which they are prosecuted in this action; and upon conviction, appealed to the Supreme Court of North Carolina where the action of the Superior Court of Wilkes County was affirmed by the North Carolina Supreme Court in an opinion filed June 5, 1947, and reported in 227 N. C. 527. The petitioner, Marvin Claude Bell, now seeks a writ of *certiorari* in this Court.

Most of the evidence in this case is of such a sordid, revolting, and repulsive nature that details will not be set out except to the extent necessary to enable the Court to

obtain a true picture of the commission of the crime of rape upon a young girl, barely sixteen years of age. The prosecutrix testified, among other things, that on the 23rd day of August, 1946, she went to a watermelon feast in the Town of Elkin with several of her young companions and left about 9:30 p.m., but too late to catch the bus back home. She and her companions went to the show and returned to the bus station about 11:00 p.m. and took the bus for home. While riding on the bus, she and her companions noticed a black car with the lights off following, and eventually, passing the bus. Her companions got off the bus at their homes and she continued on to the end of the bus line, about one hundred (100) yards from her home. As she got off the bus, she saw the car which had been following the bus parked between her and her home, and as she neared it, the door opened and one of the two occupants hollered to the other, "grab her." Notwithstanding her attempts to escape, she was overpowered, pulled into the back of the car, and when she screamed and attempted to get loose, one of the defendants threw her to the floor board and sat upon her with his hands over her mouth, gagged and blindfolded her. (R. pp. 27, 28, and 29). The car sped away with the prosecutrix; and after she was criminally assaulted by each of them on several occasions in Wilkes County, they proceeded on a mad race through several of the counties of Western North Carolina and Eastern Tennessee. During this trip, she was several times raped, and on at least one occasion, compelled to submit to the abominable and detestable crime against nature. About daybreak, the prosecutrix was finally released in a corn field near Bristol, Tennessee.

ARGUMENT

The petitioner, on Page 7 of his brief, sets out as his basis for a writ of *certiorari* the following specifications of error:

"1. THE ALLEGED CONFESSION, ORAL OR WRITTEN ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT BELL IS ILLEGAL AS EVIDENCE BECAUSE IT WAS NOT FREELY AND VOLUNTARILY SECURED OR GIVEN, AND HIS CONSTITUTIONAL RIGHTS BOTH UNDER THE CONSTITUTION AND STATUTES OF THE STATE OF NORTH CAROLINA AND THE CONSTITUTION OF THE UNITED STATES, PARTICULARLY THE "DUE PROCESS" CLAUSE OF THE 14TH AMENDMENT, ALSO THE 5TH AMENDMENT AND ALSO THE 6TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES WERE OVERRIDDEN AND VIOLATED BY THE CONSTITUTED AUTHORITIES OF THE UNITED STATES AND OF NORTH CAROLINA.

"2. THE ALLEGED CONFESSION AND ADMISSIONS, EITHER ORAL OR WRITTEN, PURPORTED TO HAVE BEEN MADE BY DEFENDANT BELL IN THIS CASE, AS SECURED AND EXTORTED IN THIS CASE BY THE MEANS USED, ARE ILLEGAL FOR ALL PURPOSES AND ARE INADMISSIBLE AS EVIDENCE AGAINST HIM.

"3. THAT THE GRAND JURY, WHICH RETURNED THE BILL OF INDICTMENT AGAINST YOUR PETITIONER AND THE DEFENDANT LITTERAL, WAS ILLEGALLY CONSTITUTED."

I

THE CONFESSION OF THE PETITIONER WAS NOT SECURED BY THREATS, OFFER OF REWARD OR HOPE OF REWARD OR BY OTHER INDUCEMENTS, OR BY BRUTALITY, TORTURE, OR AN UNREASONABLE EX-

AMINATION TO THE EXTENT THAT THE PETITIONER WAS DEPRIVED OF HIS RIGHTS AS GUARANTEED BY THE "DUE PROCESS" CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

The record in this case is void of any evidence tending to show that any threat, reward, or hope of reward, or other inducement was made, nor is there any evidence of brutality, torture, or unreasonably long examination in obtaining the petitioner's confession. The petitioner was examined while "in the sitting room, living room of the jail; it is a reception room." "There are no bars on the doors or windows." Under these circumstances, the petitioner was quizzed from about 3 o'clock in the morning until about daybreak. (R. pp. 100, 101, and 102).

—A—

CONFESSIONS ARE PRESUMED AND ARE TAKEN AS *PRIMA FACIE* VOLUNTARY, AND ADMISSIBLE IN EVIDENCE UNLESS THE CONTRARY IS SHOWN; AND THE BURDEN IS UPON THE PARTY AGAINST WHOM THEY ARE OFFERED TO SO SHOW.

Hartzell v. United States, 72 F. (2d) 569
Gray v. United States, 9 F. (2d) 337
Murphy v. United States, 285 F. 801
Ah Fook Chang v. United States, 91 F. (2d) 805
State v. Murray, 216 N. C. 681; 6 S. E. (2d) 513
State v. Wagstaff, 219 N. C. 15; 12 S. E. (2d) 657
State v. Hudson, 218 N. C. 219; 10 S. E. (2d) 730
State v. Grass, 223 N. C. 31; 25 S. E. (2d) 193
State v. Mays, 225 N. C. 486; 35 S. E. (2d) 494
State v. Wise, 225 N. C. 746; 36 S. E. (2d) 230
State v. Bennett, 226 N. C. 82; 36 S. E. (2d) 708

In *HARTZELL v. UNITED STATES*, and *MURPHY v. UNITED STATES*, *supra*, writs of *certiorari* were denied In the lower Federal Court, Counsel for the defendants ob-

jected to the testimony of officers as to confessions made by the defendants after arrest. It was pointed out in the Federal Court opinion that there is no presumption against the voluntary character of a confession, and the burden is not on the Government in the first instance to show its voluntary character, that the admissibility of such evidence depends largely upon the circumstances connected with the statements, and the matter is largely one to be determined by the trial court.

In *AH FOOK CHANG*, *supra*, it is stated:

"A confession is presumed to be voluntary. *Wilson v. United States*, 162 U. S. 613, 622, 16 S. Ct. 895, 40 L. Ed. 1090; *Murphy v. United States* (C. C. A. 7) 285 F. 801, 808. At the trial there was no evidence except that the confessions were voluntarily made, since appellants introduced none. Thus there was no such question for the jury to decide. The instructions were properly refused. *Mitchell v. Potomac Insurance Co.*, 183 U. S. 42, 49, 22 S. Ct. 22, 46 L. Ed. 74; and see *Carter v. Carusi*, 112 U. S. 478, 484, 5 S. Ct. 281, 28 L. Ed. 820."

In *MURPHY v. UNITED STATES*, *supra*, it is stated:

"Both Counsel for defendants and the District Court labored under the erroneous impression that there was a presumption against a confession, that it was presumptively inadmissible, and that the Government carried a heavy burden in establishing the voluntary character of such a statement, which burden was not met, if there was any evidence tending to impeach the statement of those who secured the statement. We do not understand such to be the law."

—B—

CONFESSIONS ARE NOT RENDERED *IPSO FACTO* INVOLUNTARY BECAUSE OF THE PRESENCE OF OFFI-

CERS OR THE FACT DEFENDANTS WERE UNDER ARREST OR IN JAIL AT THE TIME.

United States v. Mitchell, 322 U. S. 65-71; 88 L. Ed. 1140
George Pierce v. United States, 160 U.S. 355; 40 L.Ed. 454
Thomas Bram v. United States, 168 U.S. 532; 42 L.Ed. 568
Benjamin McNabb v. United States, 318 U. S. 332; 87 L. Ed. 819

State v. Richardson, 216 N. C. 304; 4 S. E. (2d) 852
State v. Thompson, 224 N. C. 661; 32 S. E. (2d) 24
State v. Smith, 213 N. C. 299; 195 S. E. 819
State v. Exum, 213 N. C. 16; 195 S. E. 7
State v. Caldwell, 212 N. C. 484; 193 S. E. 716
State v. Rodman, 188 N. C. 720; 125 S. E. 486
State v. Stefanoff, 206 N. C. 443; 174 S. E. 411

In U. S. v. MITCHELL, *supra*, it is stated:

"The mere fact that a confession was made while in the custody of the police does not render it inadmissible.' 318 U.S. at 346, 87 L. Ed 827, 63 S. Ct. 608. Under the circumstances of this case, the trial courts were quite right in admitting, for the juries' judgment, the testimony relating to Mitchell's oral confessions as well as the property recovered as a result of his consent to a search of his home."

—C—

THE CONFESSION IS NOT RENDERED INVOLUNTARY BECAUSE IT WAS OBTAINED BY FEDERAL OFFICERS PRIOR TO COMMITMENT BY U. S. COMMISSIONER.

By order dated November 6, 1946, His Honor, Johnson J. Hayes, U. S. District Judge for the Middle District of North Carolina, in which district the crime of rape was committed by petitioner, directed the U. S. Marshal for said district to release the petitioner to the Sheriff of Wilkes County to the end that he might answer the charge against him in the Superior Court of said County. Subsequently, at the De-

cember term, 1946, the regular constituted Grand Jury of Wilkes County returned a true bill of indictment against the petitioner, charging him with the crime of rape.

The statute which the petitioner claims has been violated is a Federal one involving Federal practice and procedure in the trial of Federal cases in the Federal Court. The case at bar is a State case involving the violation of a State statute; and as to whether or not the confessions were obtained prior to the commitment of the defendant by the Commissioner is not a Federal question which involves the petitioner's constitutional rights under the "Due Process" Clause. In *U. S. v. MITCHELL*, *supra*, this Court points out the distinction between the applicability of Federal statutes dealing with admission of evidence in criminal trials in the Federal Courts and as to admission of evidence in the State Courts, and said:

"Review by this Court of state convictions presents a very different situation, confined as it is within very narrow limits. Our sole authority is to ascertain whether that which a state court permitted violated the basic safeguards of the Fourteenth Amendment. Therefore, in cases coming from the state courts in matters of this sort, we are concerned solely with determining whether a confession is the result of torture, physical or psychological, and not the offspring of reasoned choice."

II

THE GRAND JURY RETURNING THE BILL OF INDICTMENT WAS LEGALLY CONSTITUTED EVEN THOUGH IT CONTAINED NO MEMBERS OF THE FEMALE SEX.

Prior to the effective date of the amendment to the North Carolina Constitution permitting women to serve on juries, women were not eligible for jury service. *STATE v. EMERY*, 224 N. C. 581; 31 S. E. (2d) 858. It is not denied that this constitutional amendment became effective on De-

ember 10, 1946, one day prior to the date the bill of indictment against the defendant was returned. The authority for placing names in the jury box is found in Article 1 of Chapter 9 of the General Statutes of North Carolina, and this section requires that the jury list, the drawing of the original panel, and the placing of names in the jury box must be completed on the first Monday in July of each odd year. General Statutes of North Carolina, 9-2. The first opportunity after the passage of the constitutional amendments affording county commissioners authority to place the names of women in the jury box was the first Monday in July, 1947. There is nothing in this amendment which requires the names of women to be placed in the jury box, it merely places them on the same basis as males.

—A—

THE STATE HAS A RIGHT TO FIX QUALIFICATIONS FOR JURORS WITHOUT VIOLATING THE FOURTEENTH AMENDMENT IF THE STATUTE DOES NOT SPECIFICALLY DISCRIMINATE BECAUSE OF COLOR OR RACE.

~~Thiel~~

~~Thiel~~ *v. South Pacific Co.*, 328 U.S. 217; 90 L.Ed. 1181
Strauder v. West Virginia, 100 U.S. 303; 25 L.Ed. 664

One quotation from *STRAUDER v. WEST VIRGINIA*, *supra*, we think will be sufficient on this question:

"We do not say that, within the limits from which it is not excluded by the Amendment, a State may not prescribe the qualifications of its jurors, and in so doing make discriminations. It may confine the selection to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications. We do not believe the 14th Amendment was ever intended to prohibit this. Looking at its history, it is clear it had no such purpose. Its aim was against discrimination because of race or

color. As we have said more than once, its design was to protect an emancipated race, and to strike down all possible legal discriminations against those who belong to it." (Italics ours.)

THIEL
In ~~PIEL~~ v. SOUTH PACIFIC CO., *supra*, dealing with the exclusion of "daily wage earners" from a Federal jury list, the Supreme Court of the United States ordered the jury panels stricken out in the exercise of its power of supervision over the admission of justice in the Federal courts, the Court saying:

"It follows that we cannot sanction the method by which the jury panel was formed in this case. The trial court, should have granted petitioner's motion to strike the panel. That conclusion requires us to reverse the judgment below *in the exercise of our power of supervision over the administration of justice in the Federal courts*. See *McNabb v. United States*, 318 U.S. 332, 340, 87 L.Ed. 819, 823, 63 S. Ct. 608." (Italics ours.)

—B—

THE PETITIONER BEING A MALE CANNOT COMPLAIN BECAUSE THE JURY, AS CONSTITUTED, DID NOT CONTAIN MEMBERS OF THE FEMALE SEX.

It is generally held, by the courts of the State of North Carolina and by the United States Supreme Court, that a person not belonging to the group or race discriminated against cannot raise a question of discrimination in the selection of a jury. A defendant must bring himself within the class discriminated against.

State v. Sims, 213 N.C. 590, 592; 197 S.E. 176, 177
Rawlins v. Georgia, 201 U.S. 638; 50 L.Ed. 899
Commonwealth v. Garletts, 81 Pa. Super. Ct., 271
McKinney v. State, 30 P. 293 (Wyo.)
State v. James, 114 A. 553 (N.J.)

Griffin v. State, 190 S.E. 2 (Ga.)

State v. Walters, 102 P. 2d. 284, 286 (Idaho)

Commonwealth v. Wright, 79 Ky. 22, 24

U. S. v. Chaplin, 54 Fed. Supp. 682

It is also generally held that officers in charge of the selection and summoning of the jury panel are presumed to have performed their duty fairly and justly without discrimination against race or class and that the burden of proof is on the defendant to show an alleged discrimination.

Murray v. Louisiana, 163 U.S. 101; 41 L.Ed. 87

Tarrance v. Florida, 188 U.S. 519; 47 L.Ed. 572; 116 So. 470 (Fla.); (certiorari denied in 278 U.S. 599; 73 L.Ed. 525)

Aiken v. Texas, 325 U.S. 398; 89 L.Ed. 1692

CONCLUSION

Even if some of the questions set out in the petition are Federal ones, they are not substantial and have been resolved adversely to the contentions of the petitioner and are not of sufficient importance to warrant consideration by the United States Supreme Court. The writ should be denied since, under the rules and decisions of this Court, review on writs of *certiorari* is a matter not of right but of discretion.

Utley v. St. Petersburg, 292 U.S. 106

Leonard v. Vicksburg S. & P. R. Co., 198 U.S. 416

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